

K-C Docket No. 10,288  
Serial No. 10/749,366  
Response to Office Action Dated July 12, 2007

**Remarks**

Claims 3, 5, 6, 8, 9, 12, 13, 14, 17, 19, 22, 24, 25, 26, 27, 30, 31, 32, 35, 36, 39, 41, 42, 44, 45, 48, 49, 50, 53, and 54 have been canceled. Thus, claims 1-2, 4, 7, 10, 11, 15, 16, 18, 20, 21, 23, 28, 29, 33, 34, 37, 38, 40, 43, 46, 47, 51, 52, and 55 are presented for Examiner Kidwell's consideration.

Claims 1, 20, and 37 have been amended to further clarify that the opening is a slit or aperture through a bodyfacing surface of the elastic inner layer. Support for this amendment can be found throughout the specification including at page 12, line 1 and at Figs. 1 and 9. No new matter has been added.

Pursuant to 37 C.F.R. § 1.114, reconsideration of the present application in view of the following responses is respectfully requested.

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### Response to Rejections

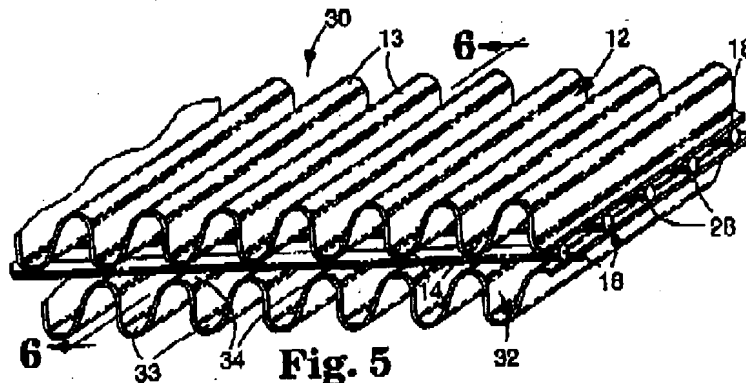
By way of the Office Action mailed July 12, 2007, claims 1-4, 6-18, 20-23, 25-40, and 42-55 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent No. 5,681,302 to Melbye et al. (hereinafter "Melbye") and further in view of U.S. Patent No 5,462,537 to Carr et al. (hereinafter "Carr"). This rejection is respectfully traversed.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. M.P.E.P. § 2142, 2143. If one or more of the criteria are missing, the Examiner has failed to establish a *prima facie* case of obviousness and the rejection should be withdrawn.

No *prima facie* case of obviousness has been established because Melbye and Carr, alone or in combination, do not teach or suggest all the claim limitations. Specifically, Melbye and Carr fail to teach or suggest a disposable garment having "an elastic inner layer wherein the elastic inner layer defines an opening located in an internal position to the elastic inner layer perimeter and wherein the opening is a slit or aperture through a bodyfacing surface of the elastic inner layer" as required by Applicants' claims 1, 20, and 37.

Melbye teaches an elastic sheet-like composite 30 having a multiplicity of generally parallel elongated strands 16 of resiliently elastic thermoplastic material thermally bonded to a first sheet 12 and a second sheet 32 as illustrated in Figure 5 (reproduced below) and described at column 10: lines 3-60.

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**Fig. 5**

The Examiner states on page 2 of the Office Action that Melbye provides an elastic inner layer that has the claimed perimeter and opening as shown in Figure 5. Furthermore, the Examiner states on page 4 that "figure 5 shows the opening as claimed near reference characters 32 and/or 33 as well as the corresponding upper portions of the elastic layer. Applicants respectfully disagree that the referenced structures are "openings" as that element is described and illustrated in the specification.

However, in an effort to expedite prosecution, Applicants have amended claims 1, 19, and 37 to further require that the opening is a slit or aperture through the bodyfacing surface of the elastic inner layer. Thus, even assuming, arguendo, that the spaces "near reference characters 32 and/or 33" of Melbye are "openings" as asserted by the Examiner, these spaces are clearly not slits or apertures through the bodyfacing surface of the elastic inner layer as required by the claims. Therefore, Melbye does not teach or suggest all the claim limitations.

The addition of Carr does not cure this defect. Therefore, no prima facie case of obviousness has been established as to claims 1, 20, and 37 and the rejection as to these claims should be withdrawn for at least this reason. Likewise, the remaining claims depend either directly or indirectly from claims 1, 20, or 37 and are patentably distinct over the combination of Melbye and Carr for at least the same reason. The rejection as to these claims should also be withdrawn.

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For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0876.

The undersigned may be reached at: (920) 721-3016.

Respectfully submitted,

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